

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NICOLE R.

Claimant,

vs.

PORTERVILLE DEVELOPMENTAL
CENTER,

Service Agency.

OAH No. N 2007020610

DECISION

Administrative Law Judge Robert Walker, State of California, Office of Administrative Hearings, heard this matter in Porterville, California, on March 21, 2007.

Norris Edwards, Director of the Office of Performance Excellence, Porterville Developmental Center, represented the developmental center.

Betty Blackmon, Clients' Rights Advocate, represented the claimant, Nicole R.

The matter was submitted on March 21, 2007.

SUMMARY AND ISSUE

Claimant has a right to have and use personal possessions. An interdisciplinary team, members of the staff at Porterville Developmental Center, concluded that there was good cause to deny claimant's right to unsupervised use of certain possessions. Is there good cause to deny claimant's right to use certain possessions without supervision?

FACTUAL FINDINGS

1. Claimant, Nicole R., is a 26-year-old woman. She is diagnosed with mild mental retardation and Prader Willi Syndrome. She lives at Porterville Developmental Center.

2. Claimant has a history of threatening to swallow nonedible items, and on December 29, 2006, swallowed a piece of crayon. She also has a history of inserting inappropriate objects in orifices. She inserted a hair pin in her nose and a pin in her vagina.

3. After claimant swallowed a piece of crayon on December 29, 2006, an interdisciplinary team, members of the staff at Porterville Developmental Center, concluded that there was good cause to deny claimant's right to unsupervised use of possessions that she might swallow. The team determined that claimant's right to use small possessions without supervision should be restored whenever she went for 30 days without threatening to swallow, attempting to swallow, or swallowing nonedible items. There is no evidence that claimant appealed this denial of rights. She successfully complied with the condition for restoration of her rights, and her right to use small possessions without supervision was restored on January 31, 2007.

4. One week later, on February 6, 2007, claimant became angry and threatened to swallow a nonedible item. On February 7, 2007, an interdisciplinary team again concluded that there was good cause to deny claimant's right to unsupervised use of possessions that she might swallow. The team determined that the condition for restoring claimant's right should be much longer than before. The team determined that claimant's right to use small possessions without supervision should be restored whenever she went for three months without threatening to swallow, attempting to swallow, or swallowing nonedible items. Claimant appealed this denial of rights, and that appeal is the subject of this hearing.

5. As noted above, it is found that, on February 6, 2007, claimant threatened to swallow a nonedible item. That finding is based on conflicting evidence. Claimant denies making that threat. Lori Miller is a unit supervisor at the Developmental Center. She has worked there 10 years. One of her duties is to protect clients and to make them safe and secure. Claimant testified that it was Ms. Miller who reported that claimant made that threat on February 6, 2007. And claimant testified that Ms. Miller was being untruthful. Claimant said there is no serious risk that she will swallow a nonedible item. She said she "inserted something" in retaliation for Ms. Miller's falsely accusing her of making that threat.

6. Sylvia Rodriguez is an individual program coordinator at the Developmental Center. She has worked there seven years. She and Ms. Miller were members of the interdisciplinary team that made the February 7, 2007, decision to deny claimant's rights. The team prepared a denial of rights report, which is in evidence. The report states that, on February 6, 2007, claimant threatened to swallow a nonedible item. Ms. Miller and Ms. Rodriguez testified that the interdisciplinary team reached a consensus that, for claimant's own good, her rights should be restricted.

7. The interdisciplinary team's denial of rights report is more reliable than claimant's testimony. It is found that on February 6, 2007, claimant threatened to swallow a nonedible item.

8. Ms. Rodriguez testified that swallowing a nonedible item can be life threatening.

9. Claimant also contends that, if it is determined that the restriction of rights was justified, the period of good behavior required to obtain a restoration of rights is unreasonably long. As noted above, the period the interdisciplinary team set is three months. In view of claimant's history of swallowing a piece of crayon and inserting inappropriate things in orifices, it is found that the three months is not unreasonable.

LEGAL CONCLUSIONS

1. Welfare and Institutions Code section 4503, subdivision (a), provides that a person with a developmental disability who has been committed to a developmental center has a right "to keep and use his or her own personal possessions." Section 4504, however, provides that the professional person in charge of the facility or his designee may, for good cause, deny a person the rights specified under section 4503, subdivision (a). By reason of the matters set forth in Findings 2 through 9, it is determined that the developmental center has good cause to impose the restriction it imposed.

2. The potential benefit to claimant in reducing the risk that she will engage in potentially life threatening behavior outweighs the infringement on her right to use small possessions without supervision

ORDER

Claimant's appeal from the developmental center's denial of rights is denied.

DATED: April 2, 2007



ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.